

**Milton Board of Adjustment Meeting  
Mariner Middle School  
Milton, DE  
Tuesday, October 14, 2008  
6:04 PM**

1. Call meeting to order.
2. Roll call of members present:  
Margo Goodman                      Richard Wheeler                      Robert Carbone  
Alex Donnan                      James Crellin
3. Reading the oath of office and swearing in of new members: Richard Wheeler, James Crellin and Robert Carbone.
4. Nominations for Chairperson and Secretary  
Margo Goodman: At this time both positions are vacant. Would anyone like to make a motion for either position? I would like to nominate Alex Donnan as Chairperson. Do you accept?  
Alex Donnan: Yes.  
Margo Goodman: At this time we'll take a vote for the Chairperson elected, Alex Donnan.  
  
Roll call vote:  
Robert Carbone                      Yes  
Richard Wheeler                      Yes  
Margo Goodman                      Yes  
  
Margo Goodman: I'll need a nomination for Secretary.  
Richard Wheeler: I'll nominate Margo. Will you accept?  
Margo Goodman: Yes, I'll accept.
5. Additions or Corrections to the Agenda  
Alex Donnan: Are there any additions or corrections to the Agenda?
6. Richard Wheeler: I make a motion that we accept the agenda as written.  
Robert Carbone: Second.  
Alex Donnan: All in favor. Opposed. Agenda approved.
7. Additions or Corrections to the Minutes of March 25, 2008  
Alex Donnan: Are there any additions or corrections to the minutes of March 25, 2008?  
Margo Goodman: I make a motion to approve the minutes of March 25, 2008, as written.  
Richard Wheeler: Second.

Alex Donnan: All in favor. Opposed. Minutes approved.

8. Public Hearing

Alex Donnan: Is there anyone here for the Applicant, Capstone Homes? The Applicant, Capstone Homes, is requesting a variance for the reduction to the front yard setback from 10' to 9-1/2'. The property is located at 305 Carlton Drive, which is in Cannery Village, further identified by Sussex County Tax Map and Parcel Number 2-35-20.00-624.00. The property is zoned R-1/LPD (Residential/ Large Partial District). Would you like to explain the Application, please?

Scott Daly: Yes. My name is Scott Daly. I'm the managing partner of Capstone Homes, LLC based in Milton. As stated in the record, I come before the Board of Adjustment to ask for a reduction in the front yard setback of 6", this is due to hardship. Unfortunately, Capstone Homes, like most home builders in the area, we function basically, as a general contractor. We don't actually perform the work, but we "sub out" the work and then manage the work. We found, upon the final survey that we were to submit to the Town for our Certificate of Occupancy, that the house was set 6" into the front yard setback. The setbacks on those lots are 10'; our house is 9-1/2' off of the edge of the right of way for the property. We are asking for the variance due to hardship because of the expense and work that would be involved in detriment to the property for us to move the house back 6". We don't believe there is an adverse affect on any of the other properties in Cannery Village due to the fact that the front yard setback in Cannery Village works that if you have a front porch, I believe you are actually allowed to build your porch 5' into the front yard setback. The majority of the houses, not all of them, but many of them in Cannery Village do have a front porch so that the net affect is that a lot of the homes in Cannery Village have a 5' front yard, this one has a 9-1/2' front yard, so it's not out of character with the placement of other homes. Most of the other homes are actually 1' behind the front yard setback because they are required to have a 6' front porch; so they set the house back 1' and the porch itself encroaches 5'. This home does not have a front porch, so there is no adverse affect to the neighborhood. It will not look out of character. None of the adjoining property owners are damaged in the granting of this variance. Honestly, it is easier to ask for the variance then it is to move a house 6". As of yesterday, the house is under contract to be sold to a local teacher, I believe, which of course, is contingent upon the resolution of this. That's all I have. Are there any questions?

Alex Donnan: When was this discrepancy discovered?

Scott Daly: It was discovered at the final survey. What we do in the construction process is they pour the foundation footer and the surveyor comes back in and places what we call "pins", but they are actually little nails in the footer. The footer is concrete; it's a foot thick and about 2' wide; it has to be 10" by code; but they always dig them wider than that; and, that is where they are supposed to locate the front wall. Then the foundation people come back in and build off of that. We certainly paid to have the foundation footers pinned so they would know exactly where to build it, because the tolerances in Cannery Village are very tight, so we were of the understanding that the concrete company that did the

foundation put the walls in the right place. The only way to ascertain exactly who would be at fault, because those pins are covered by a concrete wall, would be to lift up the house, knock down the wall and figure out if the pins are there and where they are. We didn't discover this until the end, because the surveying and everyone following the protocol is supposed to eliminate this problem. Obviously, it did not.

Alex Donnan: Is this the first error of this kind we've had in all the building of those homes in that area?

Scott Daly: This was the first foundation we put in. We're new to Cannery Village. We have assumed some of the lots that NV Homes was to build on. We have not had any setback issues. We have this house and another house that are done and we currently have two under construction and you can imagine we're being relatively vigilant given this problem with the two houses we are building now. To my knowledge, I don't know if there's ever been a setback problem in Cannery. We use the same surveyor that the other builder has been using. That's the only thing to my knowledge.

Richard Wheeler: First of all I'd like to say congratulations; you have a contract on a house in today's market; I guess that's saying something for the quality of your buildings, but my only question is what corrective action have you taken or will you take just to assure that this same kind of scenario might not happen again.

Scott Daly: We have a property construction manager whose job was to make sure that things like this don't happen. He has been replaced with a different gentleman in order that we can not make this mistake again. This is a little embarrassing, to be honest with you.

James Crellin: In the piece of paper we got with the drawings there was a picture of two houses with picket fences in front of them. Right now there are no picket fences in front of any of the Capstone Homes. Is that going to happen?

Robin Davis: That has nothing to do with the Applicant's issue right now.

Alex Donnan: Any further questions? Is there anyone here in opposition to this? None noted. Is anyone speaking on behalf of the Application, other than Mr. Daly? The public portion of the meeting is closed.

## 9. Business

Alex Donnan: The Applicant, Capstone Homes, is requesting a variance for the reduction to the front yard setback from 10' to 9-1/2'. The property is located at 305 Carlton Drive, which is in Cannery Village, further identified by Sussex County Tax Map and Parcel Number 2-35-20.00-624.00. The property is zoned R-1/LPD (Residential/Large Partial District). Any discussion?

Robert Carbone: My point would be that we certainly don't want to set a precedent that every time you get one of these things; you just shake it off lightly. As I see in our by-laws or whatever, there is information here that says that we have no way in which to rectify the problem that occurred, but you can levy a fine. I don't know how you all feel about that.

Richard Wheeler: In my opinion, I understand that there could be a fine levied, but part of the reason for me asking the question, was corrective action. I think

that it was a situation where we're just going to build a few more and see what happens, that's one thing; but, I think in replacing the manager of the property and I think some pretty strict changes there; I would suggest that we not levy that on them for this one situation. Now, if he comes back in another month from now, that may be a different story; but judging from the corrective action, I assume that probably would not happen. I would suggest that we do not levy a fine.

Alex Donnan: My comment is based upon the fact that a number of these houses have porches, that would cut the frontage down to actually 5'; the 6", when there's not going to be any porch here, at least not at the moment, doesn't appear that there is any real detriment to the look of the property or to the property value, so I don't see the need for a fine. If it happened again, we certainly would think differently about it; but to my knowledge this is the first time this issue has come up. I'm not aware of any other issues here. Are there any other comments?

James Crellin: I agree with the comment about the porch extension being even closer than this particular instance, and I think this is an inadvertent happening; but I agree that should it happen again, even given the change in site supervision, that we should really consider a fine and I don't know whether there's an amount anybody had in mind; maybe we ought to set an amount, so that they know going forward what future violations would cost them.

Robert Carbone: They do have amounts set up in here under the Town's laws that they follow here. I can be had on that, not to fine them, but I think what I would like to see if we go along with this, would be that they are put on notice that this is a one-time thing only; that we're going to approve without the fine; anything else there would be a fine assessed.

Alex Donnan: Would anyone like to make a motion for approval, subject to that?

Robert Carbone: I make a motion that we approve it, with the consideration that we put in that memo of approval, that this is a one-time approval only for a variance and any further problems in this area would cause us to levy a fine.

James Crellin: Second.

Alex Donnan: Voice vote, please.

Robert Carbone	Yes. It seems to be an honest error and the fact that we've had a hearing here on it; it's been explained; action has taken place to replace the personnel that were involved from the beginning; I'm satisfied.
Richard Wheeler	I vote yes for the reasons given earlier that with the porch situation; there's not even a porch on this house; we're talking 6" and to me, most importantly, corrective action has been exhibited and taken and hopefully this will be a one-time occurrence.
Alex Donnan	I vote yes. The impact on the house and the community seems to be minimal; it seems to be a one-time effect; and, we're admonishing Capstone Homes to not let it happen again, even though you've taken corrective action; and continue to

grant the same type of variance in new construction.  
It should never happen.

Margo Goodman I vote yes. Recognizing that this is their first  
foundation that they put into Cannery Village; also  
with the porches being set in 5' additionally; and,  
with the hiring of a new building manager.

James Crellin I vote yes for the reasons previously stated.

Alex Donnan: Motion carried.

10. Adjournment

Alex Donnan: There being no further business, I would like to entertain a motion to adjourn.

Richard Wheeler: I make a motion we adjourn.

Margo Goodman: Second the motion to adjourn.

Alex Donnan: All in favor. Opposed. Motion carried. Meeting adjourned at 7:00 PM.